

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MAURICE A. MOORE,	)	4:15CV3107
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
STEPHANIE STACY,	)	
	)	
Defendant.	)	

Plaintiff Maurice Moore filed his Complaint (Filing No. [1](#)) and a Motion for Leave to Proceed in Forma Pauperis (Filing No. [2](#)) on August 26, 2015. The court now conducts a pre-service screening of Moore's Complaint to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2). For the reasons that follow, the court finds Moore's claims are barred under the doctrine of judicial immunity.

**I. STANDARDS ON INITIAL REVIEW**

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. See [28 U.S.C. § 1915\(e\)](#). The court must dismiss a complaint or any portion of it that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

Pro se plaintiffs must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed.” [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007); see also [Ashcroft v. Iqbal](#), 556 U.S. 662, 678 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”).

“The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party ‘fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.’” [\*Topchian v. JPMorgan Chase Bank, N.A.\*, 760 F.3d 843, 848 \(8th Cir. 2014\)](#) (quoting [\*Hopkins v. Saunders\*, 199 F.3d 968, 973 \(8th Cir. 1999\)](#)). However, “[a] pro se complaint must be liberally construed, and pro se litigants are held to a lesser pleading standard than other parties.” [\*Topchian\*, 760 F.3d at 849](#) (internal quotation marks and citations omitted).

Liberally construed, Plaintiff here alleges federal constitutional claims. To state a claim under [42 U.S.C. § 1983](#), a plaintiff must allege a violation of rights protected by the United States Constitution or created by federal statute and also must show that the alleged deprivation was caused by conduct of a person acting under color of state law. [\*West v. Atkins\*, 487 U.S. 42, 48 \(1988\)](#); [\*Buckley v. Barlow\*, 997 F.2d 494, 495 \(8th Cir. 1993\)](#).

## II. DISCUSSION

Moore sues Judge Stephanie Stacy, alleging that her actions in presiding over his child-custody case violated his constitutional rights. Essentially, Moore complains that Judge Stacy awarded custody of his minor child, T.M., to T.M.’s mother, despite her knowledge that T.M.’s mother is not a fit or proper parent.

A judge is immune from suit, including suits brought under section 1983 to recover for alleged deprivation of civil rights, in all but two narrow sets of circumstances. [\*Schottel v. Young\*, 687 F.3d 370, 373 \(8th Cir. 2012\)](#). “First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge’s judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” *Id.* (internal citations

omitted). An act is judicial if “it is one normally performed by a judge and if the complaining party is dealing with the judge in his judicial capacity.” *Id.* (internal citations omitted).

Here, Moore alleged Judge Stacy acted with prejudice toward him, but he alleged no facts against Judge Stacy that would fall outside the scope of her duties in presiding over his child custody proceedings. Accordingly, she is immune from suit.

IT IS THEREFORE ORDERED that: This case is dismissed with prejudice. The court will enter judgment by a separate document. Moore’s Motion for Leave to Proceed in Forma Pauperis (Filing No. [2](#)) is denied as moot.

DATED this 30th day of October, 2015.

BY THE COURT:

*s/ John M. Gerrard*  
United States District Judge

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